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09-17-07
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy And Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

REPLY COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION ON THE ALTERNATE DECISION OF COMMISSIONER GRUENEICH

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September 17, 2007

I. INTRODUCTION

There are no new facts or legal errors presented to the Commission by the utilities or TURN in opening comments. There are errors and misstatements, one of which is especially revealing.

The utilities and TURN assert in multiple ways that the Alternate adopts a price, 8.3¢/kWh, which is supposedly higher than that proposed by any QF party.[1] The error is based on the false presumption that the MPR prices supporting CAC/EPUC's testimony originally offered in this proceeding are stagnant or stale. CAC/EPUC's testimony relied on the only publicly available price reference available to the QF parties based upon the MPR model. When the testimony was prepared and submitted in 2004 and 2005 the MPR all-in value was 7.4¢/kWh. That is no longer the MPR price, as the utilities and TURN are well aware.

The 8.3¢/kWh all-in price adopted by the Alternate is supported by substantial evidence – the Commission's most recent MPR values.

- 8.01¢/kWh -- 2006 Adopted MPR Advice Letter Resolution E4049, dated December 31, 2006.
- 8.92¢/kWh -- 2007 MPR Draft Advice Letter Resolution E4118, dated August 23, 2007, and calendared for final adoption on September 20, 2007.[2]

Prices have increased since testimony was first filed in this proceeding, and the Alternate recognizes that fact. It is disingenuous for the utilities to both mischaracterize the positions of QF parties on pricing, and to selectively ignore the well known updates to full MPR pricing.[3] The utility and TURN challenges to the Alternate are groundless and should be dismissed. It is time for all parties to move on in this proceeding and identify solutions to effectively implement the Alternate. The implementation issues to be addressed are:

1. Subject to the inability to timely adopt preferred options, address the prejudice and harm that will result from the likely delay in the availability of a Standard Offer (SO) – order the interim retention of existing or previously terminated firm capacity contract terms and conditions with new LRAC pricing pending the adoption of the SO contract.
2. Modify the Alternate to adopt the appropriate legal defenses for the state to preserve its CHP policies against anticipated utility appellate challenges.

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[1] PG&E's opening comments at 9; SCE's opening comments at. 3 (using an exclamation point to emphasize the allegation); TURN's opening comments at 1, referencing Table 7 of the Alternate p. 98).

[2] The scheduled adoption of the new MPR is ironically the same day set for Commission adoption of the final decision on avoided cost pricing in R.04-04-025/R.04-04-003. If the $7.50 gas price assumption in Table 7 were used with the most recent MPR model, the all-in price would be essentially the same as the Alternate.

[3] TURN even fails to reflect full 2004 MPR pricing by omitting the variable O&M adder of over $4/MWh.

3. Establish a fixed heat rate energy pricing option for long term firm capacity resources at a reasonably discounted level (8,100 Btu/kWh) to allow these CHP projects to secure a long-term, predictable energy price stream.
4. Eliminate the reduction in the as-available capacity payment for the misapplied Ancillary Service (AS) "credit" and update the full CT proxy capacity price.
5. Provide a remedy for long standing claims against SCE's $4.93 as-available capacity price as unlawful and warranting upward adjustment for periods beginning in 2003.
6. Clarify the definition of "small" QFs eligible for SO contracts to reflect the delivered energy based determination.
7. Specify the standards that the Commission will require to certify the viability of the MRTU "market" to reasonably establish utility avoided costs in the future.

These implementation issues are addressed in these reply comments in the context of issues presented by other parties' opening comments.

II. STANDARD OFFER CONTRACT IMPLEMENTATION OPTIONS ARE CRITICAL

The SO contract contemplated in the Alternate is unlikely to be implemented before the end of 2007.[4] CAC/EPUC have presented several options to the Commission to expedite the adoption of a final SO contract, including providing a fully integrated SO contract consistent with the Alternate. But we must be realistic, and timing is essential for certain projects.

There are at least two major firm capacity CHP resources that will face contract termination claims from SCE on January 1, 2008.[5] Others will soon follow. These resources, like other firm capacity suppliers before them, will have little option to secure reasonable contract terms and conditions until the Commission approves a SO contract. These facilities, like those before them, are prejudiced by the lack of a secure CHP long term contract policy. There is a straightforward solution. The Commission should issue the following order:

- For firm capacity CHP QF resources whose contract terminated during or reasonably before this lengthy proceeding the QF may revert/reinstate the non-price terms and conditions of the previously expired firm capacity contract until the final SO contract is adopted;
- For firm capacity CHP QF resources whose contract terminates before the SO contract is adopted, the QF may retain the non-price terms and conditions of the terminating firm capacity contract until the final SO contract is adopted.

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[4] Consider the fourteen month process in the RPS proceeding under an expedited process which started with the same EEI contract.

[5] Sycamore Cogeneration Company at 300MW; Watson Cogeneration Company, according to SCE is 385MW and will expire based upon SCE's claim on this date. Midway Sunset Cogeneration Company at 225 MW will expire in early 2009.

The LRAC pricing conditions, once established by the Commission after the post decision workshop, would be incorporated into these existing contracts. This measure would set firm contracts for firm resources, and provide a fair bridge contract pending adoption of the SO contract. This remaining implementation issue is the singularly most critical matter for the CAC firm capacity resources in this proceeding.

III. UTILITY CLAIMS THAT THE ALTERNATE LACKS LEGAL FOUNDATION ARE SPECIOUS AND SHOULD BE EXPRESSLY ADDRESSED AND REJECTED

There are repeated claims from the utilities over the supposed illegality of various aspects of the Alternate. CAC/EPUC has addressed the multiple grounds that sustain the Alternate that should be incorporated in the final decision. The following points address several challenges raised again in the opening comments:

- There is substantial evidence in this record that the utilities' avoided cost is not the flawed "market" advocated by the utilities and TURN.

- Utility assertions that a SO contract for new CHP resources is unlawful ignore the fact that the process to address and implement the state's QF long term contract policy began long before the enactment of EPAct 2005. These State proceedings and the programs they implement are grandfathered. Moreover it ignores the State's lawful, plenary authority over procurement. The utilities' challenges in this regard also fail since they have waived such challenges with regard to the State's renewable QF program.

- Representations that 10 year term SO contracts for new CHP resources would unreasonably burden customers are specious. One needs only contrast the 30 year term contracts sought and secured by utilities for resources like SCE's Mountainview plant or PG&E's Gateway facility (formerly Contra Costa 8).

- Challenges to the definition of "small" QFs (arguing it should be 20 MW in line with FERC's definition) ignore the options lawfully available to the Commission under EPAct and state law. Indeed, under the Commission's 25 MW limit, the actual net to the grid deliveries will be the relevant standard, and the limit would be less than 20 MW. The calculation for a 20 MW delivery (20MW x 8760 = 175,200 MWhs) is more than the net permitted under the Alternate (25 MW with 25% used on site, net to the grid is 25MW x .75 = 18.75MW; 18.75MW x 8760 = 164,250 MWhs).

- PG&E questions the right under federal law to contract with any QF that is not producing power primarily for industrial purposes[6]. This question seems to assume that the only reason a QF using 25% of its power on site is to make a net sale to a utility. This claim has no basis in fact and would ignore the use of process steam for the industrial process. The claim is without merit under the law.

- TURN proposes to define expiring contracts[7] to those ending within the next 12 months. This restriction would deny many existing QFs the very long term contract policy sought for so long in this proceeding. Additionally, TURN's standard would appear to exclude contracts that have

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[6] PG&E opening comments at 12.

[7] TURN opening comments at 5.

already expired. Projects with termination dates in the future would once again be without any State policy to guide their operational future. If any time period restriction is required, it should be made consistent with the LTPP cycle period of 24 months. This time frame would allow the QF and utility planners sufficient time for properly planning and implementation.

- Finally there are repeated assertions of a QF "gold rush" and a failure to assess need. These claims ignore the Commission's continuing role in administering the loading order, the utilities' procurement plans and approving contracts. There is no basis for these "Chicken Little" claims. QFs fully expect the Commission to continue to administer needs assessments now and into the future for CHP operations.

IV. UTILITY AND TURN PRICING CHALLENGES ARE PREDICATED ON FALSE COMPARISONS AND ERRORS

The 8.3¢/kWh all-in price from the Alternate has already been favorably compared to the current MPR pricing. This fact alone provides substantial evidence to sustain the Commission's adoption of this all-in price. But there is additional supporting evidence to consider.

If anything, the 8.3¢ adopted by the Alternate remains low in comparison to what the Commission has determined is a reasonable LRAC price for intermittent renewable resources under the MPR. The price in the MPR is based upon a baseload, firm gas-fired combustion turbine, *i.e.*, the equivalent of a firm, CHP QF. The most recent, full MPR price would indicate that the 8.3¢ adopted is conservatively low and a discounted price for a firm resource, since it is being applied to less valuable intermittent resources. Moreover, the MPR has a fixed heat rate for pricing purposes; an implementation concept supported by CAC/EPUC in opening comments.

TURN argues that the hybrid energy heat rate mix should be changed (lowered) giving more weight to "market" prices. TURN alleges that market changes create less dependence on RMR/OOM transactions by the CAISO. But TURN, with its preferred position on the PRG and awareness of the actual resources and costs used for serving SCE's loads knows better. While it is true that the CAISO has "released" some RMR resources, it is only because SCE has acquired these same resources under Resource Adequacy contracts. This means these resources will still serve load in the same manner they always have. More significantly, SCE's own experts acknowledge that these facilities have the same marginal costs and heat rates as when they were last publicly reported.[8] These heat rates give ample justification to the Alternate's pricing provisions.

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[8] Mark Minick, SCE expert witness on heat rates from LTPP transcript, June 5, 2007, vol. 2, page 190:23-28. "*Now I have been here since the beginning of time at Edison. I know all these plants to be sold I've tested them all for emissions. I know all their heat rates. They may have changed slightly, but not significantly. If it used to have a 10,000 heat rate, it's probably close to 10,000 now*."

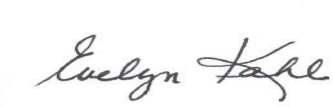
Footnote continues on next page.

V. CONCLUSION

Claims that prices are above "our avoided costs" are hollow when the utilities have precluded any evidence of their actual recorded cost data to establish their avoided cost. (*See*, 18 CFR §292.302, Availability of Electric Utility System Cost Data.) If these "market" prices were so robust, why are the utility resources being paid prices far in excess of their recommended prices? It is because these are not avoided cost prices that would support the fixed and variable costs of these utility resources. If these "market" prices are really the utility avoided cost, why aren't California electric rates among the lowest in the country? It is time for all parties to move on. The Alternate's efforts to find a middle ground on pricing should be commended.

For the reasons presented, the Alternative should be adopted with the implementation issues outlined in these comments.

Respectfully submitted,



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SCE RA Resources

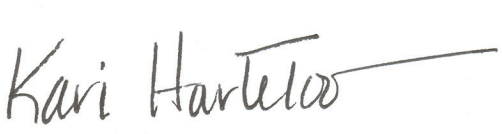
Plant	Unit	1994 Rating (MW)	2007 ISO Rating (MW)	Difference (MW)	1994 Incremental Heat Rate (BTU/kWh)
El Segundo	3	335	335	0	9,224
	4	335	335	0	9,204
Huntington Beach	1	215	225	10	9,184
	3	215	225	10	10,187
	4	225	227	2	9,721
Alamitos	2	175	175	0	10,356
	3	320	332	12	9,555
	4	320	336	16	9,099
Etiwanda	3	320	320	0	9,219
	4	320	320	0	9,290
Total:		2,780	2,830		9,436

Etiwanda 3/4, Huntington Beach 1/2 and Alamitos 3 were all "released" from an RMR designation for 2007 due to a change to RA status. See for example ISO intervention filing in Docket ER07-77.

CERTIFICATE OF SERVICE

I, Kari Harteloo, certify that I have caused the *REPLY COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION ON THE ALTERNATE DECISION OF COMMISSIONER GRUENEICH* to be served by electronic mail on the parties listed below in accordance with the Commission's rules.

Dated September 17, 2007 at Portland, Oregon.



Kari Harteloo

CALIFORNIA PUBLIC UTILITIES COMMISSION
Proceeding: R0404025
List Name: LISTQFISSUES
Last changed: August 30, 2007
and
Proceeding: R0404003
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